

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ja'Quawn Turner	Team: Squad #04	CCRB Case #: 202301074	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 01/25/2023 2:53 AM	Location of Incident: 52nd Precinct stationhouse	18 Mo. SOL 7/25/2024	Precinct: 52		
Date/Time CV Reported Wed, 01/25/2023 3:00 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 02/07/2023 8:13 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Justin Rivera	04591	958010	052 PCT
2. PO Justin Larocchia	10656	970653	052 PCT
3. PO Juan Rivera	02341	961172	052 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Debra Cotter	16806	943384	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A . PO Juan Rivera	Discourtesy: Police Officer Juan Rivera acted discourteously toward § 87(2)(b)	
B . PO Juan Rivera	Discourtesy: Police Officer Juan Rivera acted discourteously toward § 87(2)(b)	
C . PO Juan Rivera	Force: Police Officer Juan Rivera used physical force against § 87(2)(b)	
D . PO Justin Rivera	Force: Police Officer Justin Rivera used physical force against § 87(2)(b)	
E . PO Juan Rivera	Abuse: Police Officer Juan Rivera threatened to arrest § 87(2)(b)	
F . PO Juan Rivera	Abuse: Police Officer Juan Rivera threatened to arrest § 87(2)(b)	
G . PO Juan Rivera	Force: Police Officer Juan Rivera used physical force against § 87(2)(b)	
H . PO Juan Rivera	Force: Police Officer Juan Rivera used physical force against § 87(2)(b)	
I . PO Juan Rivera	Discourtesy: Police Officer Juan Rivera spoke discourteously to § 87(2)(b)	
J . PO Justin Larocchia	Force: Police Officer Justin Larocchia used physical force against § 87(2)(b)	
K . PO Justin Larocchia	Discourtesy: Police Officer Justin Larocchia spoke discourteously to § 87(2)(b)	
L . PO Justin Rivera	Abuse: Police Officer Justin Rivera issued an unlawful summons to § 87(2)(b)	
M . PO Juan Rivera	Abuse: Police Officer Juan Rivera issued an unlawful summons to § 87(2)(b)	

Case Summary

On January 25, 2023, § 87(2)(b) filed this complaint over the phone with IAB on his own behalf and on behalf of his adult son, § 87(2)(b). This complaint was referred to the CCRB, via reference number § 87(2)(b) and was received on February 7, 2023.

On January 25, 2023, at approximately 2:53am, § 87(2)(b) and § 87(2)(b) went to the 52nd Precinct stationhouse in the Bronx to inquire about a relative who was arrested earlier in the day. Police Officers Justin Rivera, Juan Rivera, Justin Larocchia, and Debra Cotter, all from the 52nd Precinct, were standing in front of the stationhouse. § 87(2)(b) and § 87(2)(b) approached the group of officers. PO Juan Rivera shined his flashlight in § 87(2)(b) and § 87(2)(b) faces (**Allegation A: Discourtesy, § 87(2)(g)**) (**Allegation B: Discourtesy, § 87(2)(g)**) PO Juan Rivera and PO Justin Rivera pushed § 87(2)(b) and § 87(2)(b) to the sidewalk (**Allegation C: Force, § 87(2)(g)**) (**Allegation D: Force, § 87(2)(g)**) PO Juan Rivera threatened to arrest § 87(2)(b) and § 87(2)(b) if they stepped back into the boundary of the stationhouse (**Allegation E: Abuse of Authority, § 87(2)(g)**) (**Allegation F: Abuse of Authority, § 87(2)(g)**) PO Juan Rivera slapped § 87(2)(b) phone out of his hand (**Allegation G: Force, § 87(2)(g)**) PO Juan Rivera pushed § 87(2)(b) against a nearby wall and handcuffed him (**Allegation H: Force, § 87(2)(g)**) PO Juan Rivera spoke discourteously towards § 87(2)(b) (**Allegation I: Discourtesy, § 87(2)(g)**) PO Justin Larocchia allegedly used force against § 87(2)(b) (**Allegation J: Force, § 87(2)(g)**) PO Larocchia spoke discourteously to § 87(2)(b) (**Allegation K: Discourtesy, § 87(2)(g)**) PO Justin Rivera and PO Juan Rivera issued an unlawful summons to § 87(2)(b) (**Allegation L: Abuse of Authority, § 87(2)(g)**) (**Allegation M: Abuse of Authority, § 87(2)(g)**)

§ 87(2)(b) was released with a summons for disorderly conduct (BR 01).

There were 5 Body-Worn Camera (BWC) videos associated with this incident (BR 02).

Findings and Recommendations

Allegation (A) Discourtesy: Police Officer Juan Rivera acted discourteously toward § 87(2)(b)

Allegation (B) Discourtesy: Police Officer Juan Rivera acted discourteously toward § 87(2)(b)

§ 87(2)(b) stated that he turned on his camera after seeing the officers turn on their BWCs. § 87(2)(b) is not very tech savvy and accidentally turned on his flashlight. § 87(2)(b) pointed his phone in PO Juan Rivera's general direction. Officers flashed their flashlight in § 87(2)(b) face in response, causing him to raise his right hand to shield his eyes from the light (BR 03).

§ 87(2)(b) also stated that § 87(2)(b) accidentally turned on the flashlight on his phone, which was pointed at PO Juan Rivera's face. PO Juan Rivera then took his flashlight out and blinded § 87(2)(b) and § 87(2)(b) (BR 04).

PO Juan Rivera stated that while the officers were speaking to § 87(2)(b) and § 87(2)(b) took out his phone to record. In doing so, § 87(2)(b) turned on his phone's flashlight and shone it in PO Juan Rivera's face. Civilians are not allowed to record anywhere within the confines of the stationhouse and that includes the exterior of the

stationhouse. PO Juan Rivera stated that though they were standing in front of the stationhouse, where they were standing was still in the premises of the stationhouse, and therefore the civilians were not allowed to record. PO Juan Rivera added that he was wearing glasses which, combined with the light from the phone, made it difficult for PO Juan Rivera to see. PO Juan Rivera told § 87(2)(b) not to shine the light in his face. § 87(2)(b) either did not hear or simply did not comply. § 87(2)(b) was about an arm's length away from PO Juan Rivera. § 87(2)(b) began to do the same. PO Juan Rivera responded by shining his flashlight in § 87(2)(b) eyes. PO Juan Rivera reacted because, while § 87(2)(b) and § 87(2)(b) never spoke directly to him, PO Juan Rivera felt that the conversation was not going anywhere. PO Juan Rivera added that officers would have been more than willing to assist them if they approached with respect; however, because § 87(2)(b) and § 87(2)(b) approached the officers with aggression, the confrontation was adversarial (BR 05).

PO Juan Rivera's BWC recording shows that, at the 01:13 time stamp, § 87(2)(b) is taking out his phone to record the officers. At 01:23, PO Juan Rivera tells § 87(2)(b) that he could record but the flashlight is in his face. § 87(2)(b) points his phone downward as if he were trying to move the phone's flashlight away from PO Juan Rivera. PO Juan Rivera also takes out his flashlight and shines it in § 87(2)(b) face. At 01:26, § 87(2)(b) also turns on his cellphone with the flashlight on, seemingly to record. At 01:30, PO Juan Rivera's flashlight shines in § 87(2)(b) and § 87(2)(b) faces (BR 02).

The NYPD Mission statement states that officers are to maintain a higher standard of integrity than is generally expected of others, respect the dignity of each individual, and render services with courtesy and civility (BR 06).

PO Juan Rivera stated that the light from § 87(2)(b) cellphone made it difficult for PO Juan Rivera to see. PO Juan Rivera told § 87(2)(b) not to shine the light in his face and § 87(2)(b) did not respond. PO Juan Rivera acknowledged that he did not have a valid reason to shine his flashlight in § 87(2)(b) and § 87(2)(b) faces other than doing so in response to the cellphone's flashlight shining in his face and § 87(2)(b) and § 87(2)(b) not complying. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (C) Force: Police Officer Juan Rivera used physical force against § 87(2)(b).

Allegation (D) Force: Police Officer Justin Rivera used physical force against § 87(2)(b).

§ 87(2)(b) stated that the officers told him to back up and officers started pushing § 87(2)(b) and § 87(2)(b) backwards and down the steps in front of the stationhouse. § 87(2)(b) held on to § 87(2)(b) and was able to prevent § 87(2)(b) from falling. Neither resisted (BR 03).

§ 87(2)(b) stated that PO Juan Rivera yelled, "Not today, not today, I'm not the one," and approached and pushed § 87(2)(b) and § 87(2)(b) caught § 87(2)(b) so that he did not fall down the steps but believed that he may have stepped wrong and hurt his back. § 87(2)(b) and § 87(2)(b) stepped all the way back to the sidewalk (BR 04).

PO Juan Rivera stated that he took the initiative to move toward § 87(2)(b) and § 87(2)(b) PO Juan Rivera placed his hand on § 87(2)(b) left arm and left shoulder pushed him back toward the sidewalk. PO Justin Rivera followed suit and pushed § 87(2)(b) into § 87(2)(b) which caused § 87(2)(b) to stumble backward down a set of steps about two or three feet away (BR 05).

PO Justin Rivera stated that, in response to § 87(2)(b) turning on his flashlight and shining it in PO Juan Rivera's face, PO Justin Rivera and PO Juan Rivera directed the two men away from the stationhouse. PO Justin Rivera guided § 87(2)(b) by placing his hand on § 87(2)(b) back and pushing § 87(2)(b) toward the sidewalk. PO Justin Rivera did not notice if he pushed § 87(2)(b) down any steps (BR 07).

PO Juan Rivera's BWC recording shows, at the 1:20 time stamp, that PO Juan Rivera takes out his flashlight as he tells § 87(2)(b) that he can record but that § 87(2)(b) needed to take the light out of his face. As PO Rivera is doing so, he shines the light directly into § 87(2)(b) face and tells him that he does not like the light in his face. § 87(2)(b) tells PO Juan Rivera, "Can you take that fucking light out of my face?" At 01:28, PO Juan Rivera steps towards § 87(2)(b) and grabs § 87(2)(b) left shoulder and pushes § 87(2)(b) back toward the street behind him. At 01:30, § 87(2)(b) turns to try and assist his § 87(2)(b) in turning off his phone when PO Justin Rivera pushes § 87(2)(b) back which causes § 87(2)(b) and § 87(2)(b) to stumble down the steps (BR 02).

According to Patrol Guide Procedure 221-01, force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. When appropriate and consistent with personal safety, members of the service will use de-escalation technique to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. In determining whether the use of force is reasonable, members of the service should consider the following: a. The nature and severity of the crime/circumstances; b. Actions taken by the subject; c. Duration of the action; d. Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; e. Whether the subject is actively resisting custody; f. Whether the subject is attempting to evade arrest by flight; g. Number of subjects in comparison to the number of MOS; h. Size, age, and condition of the subject in comparison to the MOS; i. Subject's violent history, if known; j. Presence of hostile crowd or agitators; k. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence (BR 08).

Based on consistent testimony and BWC footage, PO Juan Rivera or PO Justin Rivera did not take any steps to deescalate the situation nor ordered § 87(2)(b) or § 87(2)(b) to leave prior to pushing them away. Instead, PO Juan Rivera escalated the situation by putting his hands on § 87(2)(b) which caused PO Justin Rivera to push § 87(2)(b) BWC footage shows that neither § 87(2)(b) nor § 87(2)(b) displayed any physical or verbal aggression. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (E) Abuse of Authority: Police Officer Juan Rivera threatened to arrest § 87(2)(b).

Allegation (F) Abuse of Authority: Police Officer Juan Rivera threatened to arrest § 87(2)(b).

§ 87(2)(b)

It is undisputed that PO Juan Rivera and PO Justin Rivera escorted § 87(2)(b) and § 87(2)(b) from the front of the 52nd Precinct stationhouse to the sidewalk area outside of the stationhouse.

§ 87(2)(b) stated that § 87(2)(b) and § 87(2)(b) stepped all the way back to the sidewalk. PO Juan Rivera said, “If you step across this line, you will be arrested.” § 87(2)(b) turned and said, “Ok, which line?” and pointed down at a line on the ground in front of them (**BR 04**).

§ 87(2)(b) stated that PO Juan Rivera told § 87(2)(b) and § 87(2)(b) not to step on the property and that they would be arrested if they did (**BR 03**).

PO Juan Rivera’s BWC recording shows, at the 01:32 timestamp, that PO Juan Rivera tells § 87(2)(b) and § 87(2)(b) to “get off,” while pushing them toward the sidewalk. At 01:35, PO Juan Rivera continues telling § 87(2)(b) and § 87(2)(b) that if they do not “get off,” they will be arrested for trespassing. At 01:41, PO Juan Rivera tells § 87(2)(b) and § 87(2)(b) not to step foot into the precinct. PO Juan Rivera again shines his flashlight in § 87(2)(b) and § 87(2)(b) face and § 87(2)(b) points his camera with his flashlight in PO Juan Rivera’s direction. At 01:49, PO Juan Rivera reiterates that if either man crosses the boundary, they will be arrested for trespassing. § 87(2)(b) asks where he could not step. § 87(2)(b) points down to confirm and is heard saying, “alright.” (**BR 02**)

PO Juan Rivera stated that, once removed to the sidewalk, PO Juan Rivera informed § 87(2)(b) and § 87(2)(b) that if they crossed over the boundary into the premise of the stationhouse, they could face arrest for trespassing (**BR 05**).

According to Penal Law Code 140.05, “A person is guilty of trespass when he knowingly enters or remains unlawfully in or upon premises” (**BR 09**).

In People v. Reape, 868 N.Y.S.2d 497 (2008), the Court addressed a warning of arrest for stationhouse trespass. In that case, an officer communicated a lawful order for the defendant to exit the stationhouse area. The court found that this order was enough to revoke the defendant’s license to remain upon the precinct property. The defendant then refused to leave that property when asked to do so, thereby fulfilling the definition of remaining unlawfully in or upon premises. In essence: a civilian must first be instructed to depart from a stationhouse, and if they fail to comply, they are then considered guilty of trespassing (**BR 10**).

BWC footage shows that § 87(2)(b) and § 87(2)(b) approached officers standing immediately outside of the stationhouse to check on the status of their relative who was in custody. Neither § 87(2)(b) nor § 87(2)(b) were aggressive or uncooperative. As noted in *Allegations A through D*, the incident unfolded quickly, and PO Juan Rivera and PO Justin physically forced § 87(2)(b) and § 87(2)(b) out of the perimeters of the stationhouse. BWC footage shows that § 87(2)(b) and § 87(2)(b) were not given any warning or instruction, and they were not given the opportunity to leave on their own. PO Rivera then immediately threatened to arrest § 87(2)(b) and § 87(2)(b) for trespassing if they crossed the boundary into the stationhouse perimeters. § 87(2)(g) § 87(2)(b) and § 87(2)(b) had not concluded their business at the stationhouse, that PO Juan Rivera did not communicate any lawful order to leave the stationhouse area prior to the

threats of arrest, and that § 87(2)(b) and § 87(2)(b) did not refuse to leave, § 87(2)(g)

Allegation (G) Force: Police Officer Juan Rivera used physical force against § 87(2)(b)

Allegation (H) Force: Police Officer Juan Rivera used physical force against § 87(2)(b)

§ 87(2)(b) stated that as he lifted his camera back up, PO Juan Rivera smacked § 87(2)(b) hand causing his cellphone to fall to the ground. § 87(2)(b) asked PO Juan Rivera, “What’s your problem, man?” and went to pick up his phone. While doing so, PO Juan Rivera and PO Justin Rivera told § 87(2)(b) to put his hands behind his back and threw him against a nearby wall. § 87(2)(b) was then taken into the stationhouse (BR 04).

§ 87(2)(b) also stated that PO Juan Rivera smacked the cellphone out of § 87(2)(b) hand. Then, three to five officers jumped on § 87(2)(b) and threw him up against a wall (BR 03).

PO Juan Rivera’s BWC recording shows that § 87(2)(b) pointed his phone toward PO Juan Rivera’s face at the 01:54 time stamp. Less than a second later, PO Juan Rivera, using his left hand, which is lifted up and holding a flashlight, swipes the phone out of § 87(2)(b) hand. PO Juan Rivera tells § 87(2)(b) to get the phone out of his face. While doing so, PO Juan Rivera moves toward § 87(2)(b) so that he is almost in his face. At 01:58, § 87(2)(b) picks up the phone and lifts it up in the direction of PO Juan Rivera’s upper body. PO Juan Rivera pushes § 87(2)(b) up against a nearby wall. PO Juan Rivera and additional officers place § 87(2)(b) in handcuffs. At 02:25, PO Juan Rivera says, “That’s what you want. You want a reaction, right?” § 87(2)(b) responds, “No, not at all.” PO Juan Rivera says, “You don’t know your rights.” At 02:55, PO Juan Rivera holds onto § 87(2)(b) left bicep and pushes him closer toward the wall. At 03:02, PO Juan Rivera moves his hand and holds onto § 87(2)(b) elbow area and holds it out and up. § 87(2)(b) turns and asks PO Juan Rivera not to push his elbow up. At 03:40, officers walk § 87(2)(b) to the stationhouse (BR 02).

PO Juan Rivera stated that § 87(2)(b) again took his phone out to record but pointed it toward PO Juan Rivera’s face. PO Juan Rivera took this action to be antagonistic and felt that § 87(2)(b) was making a threatening action toward him. PO Juan Rivera moved § 87(2)(b) arm out of his face, knocking the phone out of § 87(2)(b) hand. PO Juan Rivera did this to move the light from his eyes. PO Juan Rivera then decided to place § 87(2)(b) under arrest for disorderly conduct. PO Juan Rivera grabbed § 87(2)(b) left arm while PO Justin Rivera grabbed § 87(2)(b) right arm. § 87(2)(b) was handcuffed and taken into the stationhouse (BR 05).

PO Justin Rivera stated that § 87(2)(b) was not happy about being escorted to the sidewalk area and stuck his phone in PO Juan Rivera’s face. The officers then put § 87(2)(b) hands behind his back and placed § 87(2)(b) under arrest for disorderly conduct. PO Justin Rivera grabbed § 87(2)(b) right side while PO Juan Rivera grabbed § 87(2)(b) left side. PO Juan Rivera knocked § 87(2)(b) phone out of his hands. § 87(2)(b) was taken inside the stationhouse and placed in a hold cell (BR 07).

According to Patrol Guide Procedure 221-01, force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is

reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances (BR 08).

PO Juan Rivera stated that § 87(2)(b) pointed his cellphone toward PO Juan Rivera's face, which PO Juan Rivera interpreted as antagonistic and threatening, so PO Juan Rivera moved § 87(2)(b) arm out of his face to move the light from his eyes. Video evidence shows that § 87(2)(b) lifted his phone up to PO Juan Rivera's hand which was extended up and holding a flashlight pointed at § 87(2)(b). Video evidence confirms that PO Juan Rivera then slapped § 87(2)(b) hand causing § 87(2)(b) cellphone to fall to the ground and then tells him to "get that out of my face." PO Juan Rivera pushed § 87(2)(b) against a wall and placed him in handcuffs without informing § 87(2)(b) that he was being arrested or issuing any directive to place his hands behind his back. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (I) Discourtesy: Police Officer Juan Rivera spoke discourteously to § 87(2)(b).

§ 87(2)(b) did not allege that PO Juan Rivera used profanity towards him.

PO Juan Rivera's BWC recording shows that, at 02:48, PO Juan Rivera says to § 87(2)(b) "You don't come into a precinct like that." § 87(2)(b) answers, "Like what?" PO Juan Rivera responds, "Like an asshole. You don't do that." § 87(2)(b) tells PO Juan Rivera that he is the asshole. At 02:57, § 87(2)(b) tells PO Juan Rivera something along the lines of, "Real tough with a badge." PO Juan responds, "Fuck out of here." (BR 02)

PO Juan Rivera explained that he was not calling § 87(2)(b) an "asshole," but was saying "he was being an asshole," based on how § 87(2)(b) was acting in that moment. PO Juan Rivera added that he was "just responding with verbal force" (BR 05).

The NYPD Mission statement states that officers are to maintain a higher standard of integrity than is generally expected of others, respect the dignity of each individual, and render services with courtesy and civility (BR 06).

While officers are allowed to use discourteous language during stressful situations, officers are only permitted to do so when scenes are so chaotic that the duty of courteousness and professional behavior should be overridden by the immediate need to maintain order. Disciplinary Case No. 2017-17005 (BR 11).

Video evidence confirms that PO Juan Rivera told § 87(2)(b) that he did not need to come into the stationhouse "like an asshole," and "fuck out of here." At the time, § 87(2)(b) was in handcuffs and facing a wall. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (J) Force: Police Officer Justin Larocchia used physical force against § 87(2)(b).

Allegation (K) Discourtesy: Police Officer Justin Larocchia spoke discourteously to § 87(2)(b).

§ 87(2)(b)

§ 87(2)(b) stated that he was brought inside the stationhouse, placed facing a wall, and told to stay there. § 87(2)(b) was compliant, but PO Larocchia put pressure on § 87(2)(b) back. While waiting to be processed, § 87(2)(b) told PO Larocchia that he and the other officers were “power tripping.” PO Larocchia responded, “We love to power trip.” § 87(2)(b) continued, “You are power tripping because you are out of shape and want to feel like tough guys.” PO Larocchia responded, “Yeah, I’m a tough guy. My wife gets banged while I’m here at work.” § 87(2)(b) was shocked and told PO Larocchia that he should be embarrassed to speak like that in public. PO Larocchia responded, “Oh you didn’t know? I’m a cuck. I’m a cuck” (BR 04).

Urban Dictionary (urbandictionary.com), a user-populated dictionary of slang terms, has an entry for “cuck” with the top definition for the term as, “a man who lets his wife or girlfriend have sex with other men. Often the man lets her do whatever she wants and treat him like shit.” It is the short version of the term “cuckold.” (BR 26)

PO Juan Rivera’s BWC recording shows PO Juan Rivera walking § 87(2)(b) into the stationhouse and telling him to face the wall at the 4:05-time stamp. PO Juan Rivera then dislodges his BWC and places it on top of the front desk, facing § 87(2)(b). At 04:12, PO Larocchia is standing on § 87(2)(b) left side while PO Justin Rivera checks § 87(2)(b) pockets. At 04:13, PO Larocchia grabs § 87(2)(b) left arm, right above the elbow, and his arm is diagonal across § 87(2)(b) back. At 04:19, PO Justin Rivera walks away to the front desk. PO Larocchia stays holding onto § 87(2)(b) left elbow area until 08:57 (BR 02).

PO Larocchia’s BWC recording shows, at the 04:00-time stamp, that PO Juan Rivera walks § 87(2)(b) into the stationhouse and tells him to go against the wall. At 03:59, § 87(2)(b) is standing facing the wall. PO Larocchia approaches and stands on § 87(2)(b) left side. At 04:08, PO Larocchia grabs § 87(2)(b) left elbow area. At 04:22, PO Larocchia’s right forearm appears stretched across § 87(2)(b) back. PO Larocchia’s left hand briefly touches § 87(2)(b) back. At 04:25, PO Larocchia says, “Oh, I’m the fat kid that you bullied in high school?” § 87(2)(b) responds, “I bullied? No, I’m asking were you bullied in high school.” PO Larocchia responds, “Did I get bullied? No, I was in a lot better shape in high school, to be honest with you.” § 87(2)(b) says, “I doubt it.” PO Larocchia responds, “I was. Believe it or not. I was a handsome young man.” It is unclear what § 87(2)(b) says but he mentions “More physicals.” PO Larocchia responds, “More physicals? That’s probably a good idea.” At 04:38, § 87(2)(b) says something along the lines of, “Once you get the job. You feel tough with a gun.” PO Larocchia responds, “No, I don’t feel that tough. It’s not that intimidating.” § 87(2)(b) says, “I’m not intimidated.” PO Larocchia continues, “Not at all, bro. That’s why I don’t gotta feel tough.” § 87(2)(b) says, “I’m talking to you, bro.” PO Larocchia responds, “You ain’t talking to me. You’re talking at me.” § 87(2)(b) responds but it is unclear what he says. PO Larocchia responds, “Oh, my wife?” § 87(2)(b) says yeah. PO Larocchia says, “Okay. I’m sure she does.” It is unclear what § 87(2)(b) says, but PO Larocchia responds, “What? You want me to touch her deeper, bro? That’s kinda weird.” § 87(2)(b) says, “LGBTQ, right?” PO Larocchia repeats, “LGBTQ, yeah man. 2023. You can do whatever you want.” It is unclear what § 87(2)(b) says but PO Larocchia responds, “Yeah, absolutely.” It is unclear what § 87(2)(b) says but PO Larocchia responds, “No, I’m good, man.” At 05:28, PO Larocchia says, “It’s always the fat guys, man. We suck.” At 05:45, PO Larocchia asks § 87(2)(b) “Why are you shaking, bro? It’s not that cold.” § 87(2)(b) says, “Your wife gave me the clap.”

PO Larocchia responds, “My wife gave you the clap? Oh shit, good thing I don’t have sex with her anymore.” It is unclear what § 87(2)(b) says but PO Larocchia responds, “Oh dude. My whole life’s an embarrassment. Look at me. I’m a fat cop, remember?” At 07:47, PO Larocchia says, “So all those cameras that you like to record with, those are our version.” Simultaneously, PO Larocchia points to a flyer on the wall on § 87(2)(b) left which displays mandatory BWC activation. PO Larocchia says, “Yeah, you like that?” At 07:50, § 87(2)(b) asks, “You caught your wife cheating on you then.” PO Larocchia responds, “No, I was actually in the muster room.” § 87(2)(b) says, “Oh shit.” At 07:56, PO Larocchia responds, “That’s ok. I’m a cuck, dude. You know? I like watching.” § 87(2)(b) then complains about pressure on his back when PO Larocchia leans forward (BR 02).

PO Larocchia stated that § 87(2)(b) made a comment about him during the normal processing procedure. When asked about the comment, PO Larocchia recalled § 87(2)(b) making a comment about his weight and PO Larocchia responded that he was “a handsome guy back in the day.” In his first CCRB interview, PO Larocchia denied referring to himself as a “cuck.” PO Larocchia also denied applying pressure to § 87(2)(b) back while holding onto him (BR 12). In his second CCRB interview, PO Larocchia was shown his BWC recording from the 07:45 to the 08:00 timestamp. PO Larocchia explained that earlier in the conversation, § 87(2)(b) had stated that everyone likes to “bang his wife,” so PO Larocchia was just engaging in the conversation with § 87(2)(b). PO Larocchia stated that he did not want to argue or escalate the situation further, so he opted to go along with what § 87(2)(b) was saying to him. PO Larocchia insisted that there was no malicious intent behind the comment. When asked if he felt that it was appropriate to make, PO Larocchia stated that he felt it was more appropriate to go along with what § 87(2)(b) was saying versus giving the impression to § 87(2)(b) that his words had offended him or that he was getting under his skin in any way because that would just make the situation worse (BR 13).

The NYPD Mission statement states that officers are to maintain a higher standard of integrity than is generally expected of others, and are to respect the dignity of each individual, and render services with courtesy and civility (BR 06).

Although video evidence shows that PO Larocchia had his right forearm across § 87(2)(b) back while holding onto § 87(2)(b) left arm, video footage does not show whether PO Larocchia applied pressure to § 87(2)(b) back and PO Larocchia denied doing so. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) alleged that PO Larocchia referred to himself as a “cuck,” unprompted. BWC footage shows that PO Larocchia refers to himself as a “cuck” solely in response to § 87(2)(b) stating to PO Larocchia, “Your wife gave me the clap” and “You caught your wife cheating on you then.” PO Larocchia stated, and BWC corroborates, that PO Larocchia simply agreed with § 87(2)(b) insulting remarks. § 87(2)(g)

§ 87(2)(g)

Allegation (L) Abuse of Authority: Police Officer Justin Rivera issued an unlawful summons to § 87(2)(b)

Allegation (M) Abuse of Authority: Police Officer Juan Rivera issued an unlawful summons to § 87(2)(b)

It is undisputed that § 87(2)(b) was released with a summons for disorderly conduct (subsection 1- engages in fighting or in violent, tumultuous or threatening behavior) issued by PO Justin Rivera (BR 01).

Both PO Juan Rivera (BR 14) and PO Justin Rivera (BR 15) stated that they collectively decided to release § 87(2)(b) with a summons and that they consulted with an unknown supervisor about their decision. PO Juan Rivera and PO Justin Rivera did not recall if there were other civilians present when § 87(2)(b) was placed under arrest. PO Juan Rivera did not recall how it was decided who wrote the summons. PO Justin Rivera stated that he volunteered to write the summons.

PO Cotter's BWC recording shows, from 01:53 to 01:57, the view of the front of the police stationhouse property and the subsequent street block where the stationhouse is located. Multiple officers, § 87(2)(b) and § 87(2)(b) are present when § 87(2)(b) is placed under arrest. No other civilians are seen (BR 02).

According to Penal Law § 240.20, "A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof: He engages in fighting or in violent, tumultuous or threatening behavior; or He makes unreasonable noise; or in a public place, he uses abusive or obscene language, or makes an obscene gesture; or He obstructs vehicular or pedestrian traffic; or He congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; or He creates a hazardous or physically offensive condition by any act which serves no legitimate purpose (BR 16).

Per People v. Baker, 20 N.Y.3d 354 (2013), when determining whether a person is guilty of disorderly conduct, police officers are to consider the public harm element of the conduct by assessing the nature and character of the conduct, the time and place where the conduct occurred, the number of people in the vicinity, whether people in the vicinity were drawn to the disturbance, how many were drawn to the disturbance, and how those people reacted to the disturbance (BR 17).

PO Juan Rivera and PO Justin Rivera admitted that they collectively decided to release § 87(2)(b) with a summons. § 87(2)(b) received a criminal court summons for disorderly conduct (subsection 1- engages in fighting or in violent, tumultuous or threatening behavior). BWC, which is comprehensive, shows that a crowd neither forms nor observes this incident. Furthermore, § 87(2)(b) did not engage in any violent, tumultuous, or threatening behavior prior to being placed into custody. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 18).
 - This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 19).
 - PO Juan Rivera has been a member of service for eight years and has been a subject in four CCRB complaints and 13 allegations, none of which were substantiated. § 87(2)(g)
- § 87(2)(g)

- PO Justin Rivera has been a member of service for nine years and has been a subject in five CCRB complaints and six allegations, none of which were substantiated. § 87(2)(g)
- PO Justin Larocchia has been a member of service for three years and this is the first CCRB complaint to which he has been a subject (**BR 22**).

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of February 8, 2024, the undersigned sent a FOIL request to the New York City Office of the Comptroller and the results are pending (**BR 23-BR 24**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

RPBP History

- This complaint did not contain any allegations of Racial Profiling/Bias-Based Policing.

Squad No.: 4

Investigator:	<u>Inv. JaQuawn Turner</u>	<u>Inv. JaQuawn Turner</u>	<u>4/12/2024</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Raquel Velasquez</u>	<u>IM Raquel Velasquez</u>	<u>April 12, 2024</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date